

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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FRANK RALPH LaPENA,
Petitioner,

vs.

GEORGE GRIGAS,

Respondent.

2:00-cv-00960-PMP-RJJ

ORDER

Before the Court for consideration is Petitioner, Frank Ralph LaPena's Motion to Recuse (Doc. #132) filed September 18, 2012. LaPena's Motion is straightforward. Essentially, he asserts that because the undersigned was employed as a Deputy Public Defender for Clark County, Nevada, from September 1973 through October 1975, the undersigned must have had knowledge that the Office of the Public Defender was, sometime in 1974, representing an individual named Gerald Weakland, who was a witness adverse to Petitioner LaPena at that time.

Although Petitioner LaPena has his facts right as to the undersigned's employment, and may also be correct that the Office of Clark County Public Defender represented and individual named Gerald Weakland while the undersigned was so employed, Petitioner LaPena has his conclusions all wrong. The undersigned never represented Gerald Weakland, and to the Court's recollection was never aware of Gerald Weakland or his participation as a witness against Petitioner LaPena in 1974. Additionally, the undersigned was unaware of Petitioner

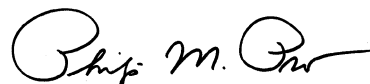
1 LaPena in 1974 and has no idea who represented him at that time. Therefore, this Court finds
2 no basis to recuse as no conflict of interest exists, and any appearance of conflict is so remote
3 and attenuated as to extinguish the merit of Petitioner LaPena's recusal argument.

4 As a further grounds supporting recusal, Petitioner LaPena expresses his "belief" that
5 the undersigned "was, and is, friends with United States Magistrate Judge Lawrence Leavitt,
6 who prosecuted Petitioner's co-defendant Rosalie Maxwell in August 1976 and lost. According
7 to LaPena, this puts into question the Court's ethical duty to recuse from this high profile case
8 on grounds of bias, prejudice, impartiality, and conflict of interest."

9 The undersigned acknowledges that he has been friends with retired Magistrate
10 Judge Lawrence Leavitt for approximately 40 years. Indeed, Judge Leavitt succeeded the
11 undersigned as United States Magistrate Judge when the undersigned was elevated to the
12 United States District Court in 1987. Such a friendly relationship with a colleague, absent
13 more, certainly provides no basis for recusal. The undersigned was not aware in 1976 of Judge
14 Leavitt's involvement as a Clark County Deputy District Attorney in the prosecution of
15 Petitioner's co-defendant Rosalie Maxwell. Moreover, while Petitioner LaPena understandably
16 views his case as "high profile," the undersigned suggests Petitioner LaPena's assessment is
17 overly subjective. The undersigned Judge was not aware of Petitioner LaPena's case in 1976,
18 and even if the undersigned had, at some point, read a newspaper article or been otherwise
19 aware of his prosecution at that time, such awareness would provide no basis for recusal.

20 **IT IS THEREFORE ORDERED** that Petitioner LaPena's Motion to Recuse (Doc.
21 #132) is **DENIED**.

22 DATED: September 29, 2012.

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24 

25 PHILIP M. PRO
26 United States District Judge